

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1309 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No.

HIRABHAI MOHANBHAI PARMAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR SATISH R PATEL for the Petitioner.

MR.HL JANI, AGP,for the Respondents.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 21/07/98

ORAL JUDGEMENT

The petitioner, who is detained by an order dated 11-1-98 passed by the Police Commissioner, Vadodara City, under Section 3 (2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act"), has filed this petition under Article 226 of the Constitution of India challenging the legality and validity of the order of detention.

In the grounds of detention supplied to the petitioner, the detaining authority has placed reliance on two cases registered by the Baroda Railway Police and Valsad Railway Police for offences punishable under sections 328, 379, 114, 394 and 34 of the IPC in respect of which the investigation is going on. Besides these two cases, the detaining authority has placed further reliance on the statements of three witnesses of the incidents of 15-11-97, 28-11-97 and 26-10-97, whose identity has not been disclosed to the petitioner by the detaining authority claiming privilege under section 9(2) of the PASA Act.

As regards the incident of 15-11-97 is concerned, it is alleged that when the petitioner and his associates were going, they stopped the witness and asked to keep the beg at the place of his business and that they will return after about two hours and take the same back. As the witness refused, they got annoyed and started beating the witness. The witness shouted and the people gathered and when the petitioner and his associates took out Rampuri knife and rushed towards the crowd, the crowd dispersed and an atmosphere of terror and fear was created.

As regards the incident of 28-11-97 is concerned, it is alleged that the petitioner and his associates stopped the witness and asked him to purchase the golden ring and a wrist watch and when the witness refused he was beaten. People collected there and when some one shouted from the crowd that the petitioner and his associates are thieves, the petitioner took out knife and rushed towards the crowd and the crowd dispersed and an atmosphere of terror and fear was created.

As regards the last incident of 26-10-97 is concerned, it is alleged that the witness was beaten on the suspicion that he was an informant of the Police. On this occasion also people collected there; the petitioner took out knife and rushed towards the crowd and the crowd dispersed and an atmosphere of terror and fear was created.

On the basis of the aforesaid material, the detaining authority recorded a finding that the petitioner is a dangerous person within the meaning of Section 2(c) of the PASA Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, passed the impugned order of detention against the petitioner, which has been

challenged by the petitioner by way of this petition.

This petition is required to be allowed on the ground that assuming for the sake of arguments that the allegations made against the petitioner are true, the same at best can be treated as breaches of law and order and not public order. I have gone through the statements of the witnesses which are stereo-type. Reading the same, it clearly establishes without any manner of doubt that the statements are quite general and vague in nature and the alleged incidents are against individuals and the general public is not concerned at all and, therefore, it cannot be contended that the petitioner is involved in committing breaches of public order. Even if the allegations made are believed to be true, the same at best can be termed as breach of law and order and in no circumstances the same can be termed as breach of public order. Consequently, therefore, the satisfaction arrived at by the detaining authority that the petitioner is a dangerous person is also visited. The order of detention is therefore liable to be quashed and set aside.

In the result, this petition is allowed. The order of detention dated 11-1-98 is quashed and set aside. The detenu Hirabhai Mohanbhai Parmar is ordered to be released forthwith if not required in connection with any other offence. Rule is made absolute accordingly with no order as to costs.

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